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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/030,818	06/07/2002	Hans Bruder	396/50809	2416

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EXAMINER

MACARTHUR, VICTOR L

ART UNIT	PAPER NUMBER
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3679

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Please find below and/or attached an Office communication concerning this application or proceeding.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

MAILED

NOV 23 2004

Application Number: 10/030,818
Filing Date: June 07, 2002
Appellant(s): BRUDER, HANS

GROUP 3600

Song Zhu
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 9/7/2004.

A statement identifying the real party in interest is contained in the brief.

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(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

Examiner agrees with the appellant's statement that claims 10 and 12 stand or fall together; Claims 14-16 stand or fall together; and Claims 17 and 18 stand or fall together. While not specifically stated it is clear that claim 11 stands or falls alone and that claim 13 stands or falls alone.

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

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(9) Prior Art of Record

4,410,157	Monti et al.	10-1983
2,538,483	Summers	11-1945

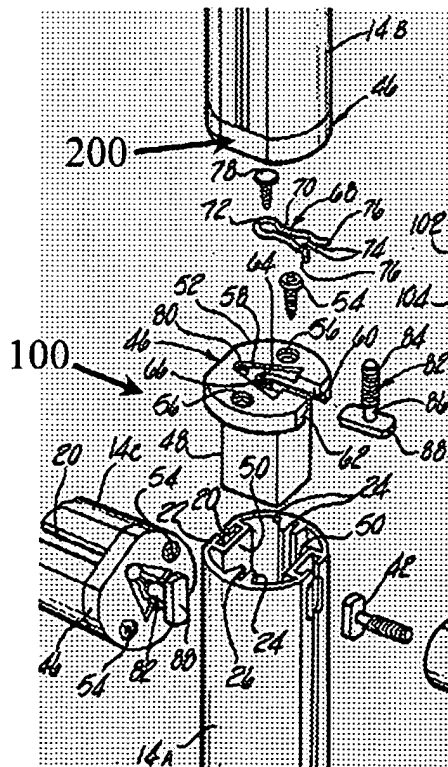
(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 10-16 are rejected under 35 U.S.C. 102 (b) as being anticipated by Monti (U.S. Patent 4,410,157). This rejection is set forth in a prior Office Action, mailed on 3/24/2004.

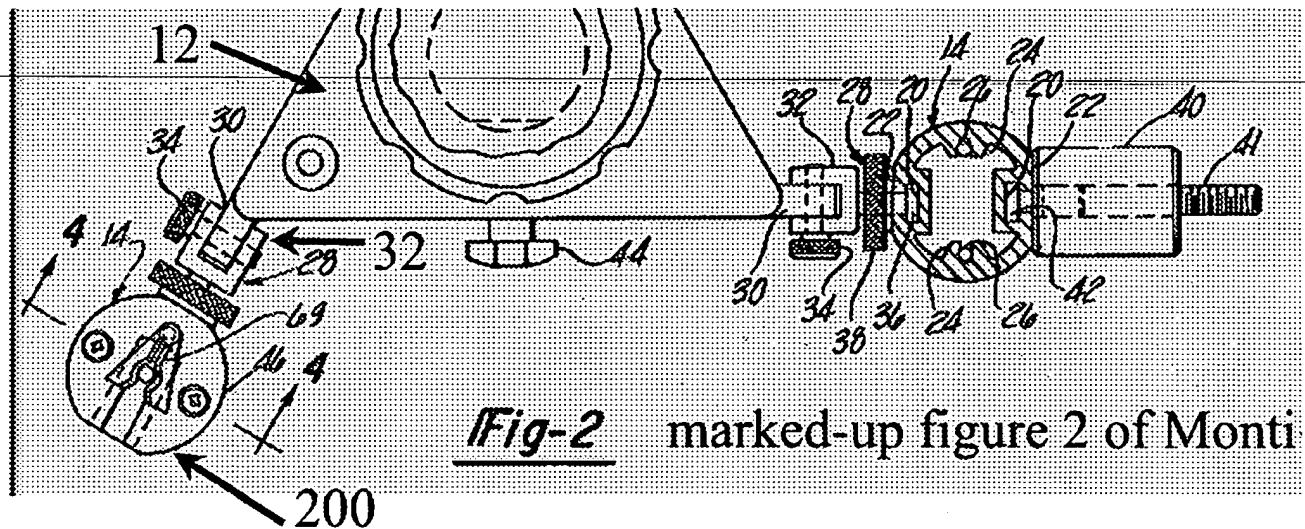
Claims 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Monti et al. (U.S. Patent 4,410,157) in view of Summers (U.S. Patent 2,538,483). This rejection is set forth in a prior Office Action, mailed on 3/24/2004.

These rejections are supported by the following findings which refer to marked-up figures 3 and 2 of Monti below:



marked-up figure 3
of Monti

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Findings

1. Monti discloses a supporting profile (elements shown in fig.3) for erecting a structure (elements shown in fig.2).
2. Monti discloses that the supporting profile (fig.3) comprises: an elongated hollow body (14A) having a first end (top of 14A) and a second end (bottom of 14A) and a longitudinal groove (20) on the outside of the body (14A).
3. Monti discloses that the supporting profile (fig.3) further comprises: an adapter piece (46 received within top of 14A, designated as 100 by the examiner in marked-up fig.3 above) inserted into and secured to the first end (top of 14A) of the elongated body (14A), the adapter piece (100) having a receiving chamber (66).
4. Monti discloses (fig.3) that the receiving chamber (66) is provided with a hollow interior (hollow interior of 66) and as such is inherently capable of receiving therein portions of turnbuckles that are small enough to fit therein.

5. Monti discloses that the supporting profile (fig.3) further comprises: a disk-shaped end piece (52 as described by Monti in col.3-4, designated as 200 by the examiner in marked-up fig.3 above) disposed at the first end (top of 14A) and connected (via 82) to the adapter piece (100), wherein the disk-shaped end piece (200) is mounted (via 100) on a face (top face of 14A) of the hollow body (14A) and is fastened to the adapter piece by fasteners (68, 82, col.5, ll.20-26).
6. Monti discloses (fig.3) that the end piece (200) has a concave recess (curved portion of 64 in 200, not shown in fig.3 but necessarily there since upper and lower 46 are of identical construction) adapted (by 82 to be connected with 20) to an external curvature of a round profile (the round profile [i.e. outline] of 14 near 20)
7. Monti discloses (figs.2 and 3) that hollow bodies (14A), (14B) and (14C) of (fig.3) are identical in structure to each other and to hollow bodies (14) of (fig.2), therefore the end piece (200 as seen in marked up figure 2) has a joint (28 as seen in fig.2) for connection (via 12) to another profile (14 of figure 2).
8. Monti discloses (fig.2) that the elements of the right most joint (right 28) are identical to the elements present in the left most joint (left 28) but are not labeled as completely on the left as on the right side. As such Monti discloses (marked-up fig.2) that the left joint (left 28) includes a first disk (left 32) which extends perpendicular to (in that 32 is angularly offset from 200 by 90 degrees) the end piece (200) and has a center bore (bore in 32 that receives 34), and a second disk (30) having a center bore (bore in 30 that receives 34) and being connected with the first disk (32) by means of a bolt (34) extending through the center bores and acting as an

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axis of rotation, the second disk having a fastening device (12) for connection to another profile.

9. Monti discloses (fig.2) a bolt (34) with two ends (the head end and tip end of 34) wherein each end is exposed to view outside of the disks (30, 32).
10. Summers teaches that the head end (col.2, l.22) as well as the threaded end (fig.2) of a bolt should each be covered up with a hemisphere (10), since these ends are both unsightly (col.1, ll.1-5 and ll.40-50).
11. Summers teaches (fig.2) that direct contact or accessibility is not necessary to “cover” an element. Note that the hemisphere (10 as seen in fig.2) covers the disc shape bottom element without contact simply by being over it.

(11) Response to Argument

Regarding rejection of claim 10 under 35 U.S.C.102(b), with which claim 12 stands or falls:

Monti discloses every claim 10 limitation as is detailed in findings 1-5 above.

The applicant argues that claim 10 requires that the disk-shaped end piece “belong to” the supporting profile because claim 10 recites that the supporting profile comprises the disk-shaped end piece. The examiner disagrees. “Comprises” and “belong” are not synonymous. Does the applicant intend for belong to require unitary construction? As seen in applicant’s figure 2, the applicants own disk-shaped end piece (5) and supporting profile (1) are separate elements. The applicant has failed to clearly state what, if any, structural difference is intended by the non-claimed un-recited limitation “belong to”. The only difference the examiner can see is that the

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applicant's end piece directly contacts the supporting profile whereas Monti's does not.

~~However, even if "belong to" is taken to be synonymous with comprises, neither limitation~~
would necessarily require direct contact.

The applicant argues that Monti does not disclose a single supporting profile that includes an elongated hollow body, an adapter piece and a disk-shaped end piece. Again, the limitation "includes" is not recited in the claim. Furthermore, even if these unrecited limitations were read into the claims, the applicant has failed to state specifically how an element of the applicant's invention is "included" any more than that of Monti. What physical relationship would the applicant mean to imply with "includes". Does the applicant intent for "includes" to necessarily require direct contact or even unitary construction? It appears that Monti "includes" elements in as much as the applicant's invention does. The applicant argues the example of "a drawing showing two tables that each have four legs does not show one table with five legs." This example is irrelevant, since Monti is not dealing with two completely separated systems (tables spaced apart) but rather a single connected assembly as seen in figure 2.

The applicant argues that element (200) as shown in the marked-up drawings of Monti is not disk-shaped. The examiner disagrees. Applicants own disk-shaped end piece (5) is not a perfect disk in that it has elements 9 and 10 adjoined. Applicant further describes element 15 as a disk even though it is unitary with 16 to form the shape of a key as seen in fig.5. As such, element 200 of Monti is disk shaped in as much as the applicant's own invention is.

The applicant argues that the recitation "for receiving a turnbuckle" is not an intended use of the receiving chamber. The examiner disagrees. Nowhere in the claims is a turnbuckle positively recited, nor do the drawings show a turnbuckle. Furthermore, the applicant has failed

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to show how being “for receiving a turnbuckle” changes the structural scope of the receiving chamber.

The applicant argues that the Monti receiving chamber (66) is not capable of receiving a turnbuckle. The examiner disagrees. Monti discloses (fig.3) that the receiving chamber (66) is provided with a hollow interior (hollow interior of 66) and as such is inherently capable of receiving therein portions of turnbuckles that are small enough to fit therein.

Regarding rejection of claim 11 under 35 U.S.C.102(b), which stands or falls alone:

The applicant argues that Monti does not disclose a concave recess adapted to an external curvature of a round profile, since the Monti recess has a much smaller radius than the external curvature of the hollow profile. This is not persuasive since “a round profile” need not necessarily be one of the hollow profiles. Furthermore, “adapted” does not necessarily require equal radii or conforming shapes. As claimed, mere connection via intervening members qualifies as “adapted”, as is detailed in Finding 6 above.

Regarding rejection of claim 13 under 35 U.S.C.102(b), which stands or falls alone:

The applicant argues that Monti does not claim that the clamping assembly is a part of the lower end cap of support member 14B and that the examiner has chosen a support profile with a “hodge podge” combination of components. The examiner disagrees. Claim 13 does not recite this limitation that the applicant argues. Rather, claim 13 merely requires that the end piece has a joint with the intended use of being for connection to another profile (i.e. any randomly chosen profile). Monti meets this limitation as detailed in Finding 7 above.

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Regarding rejection of claim 14 under 35 U.S.C.102(b) with which claims 15 and 16 stand or fall:

The applicant argues that Monti does not disclose a first disk which extends perpendicular to the end piece since it does not “reach” as in “reach out to contact the end piece”. This argument is moot since the claims do not recite “reach out to contact”. The recited limitation “extends perpendicularly” does not necessarily require reaching out to contact and is met simply since Monti’s first disk is angularly offset from the end piece by 90 degrees, as is detailed in finding 8 above.

Regarding rejection of claim 17 under 35 U.S.C.102(b) with which claim 18 stands or falls:

The applicant argues that Summers does not teach covering a bolt head end and bolt thread end. This is not true as finding 10 details. Monti discloses a bolt exposed at a bolt head end and a thread end, as detailed in finding 9. Summers teaches that both exposed bolt head ends and bolt thread ends are unsightly and can benefit from being covered by hemispheres, as detailed in finding 10.

The applicant argues that neither side of the second disk is accessible by a cover and neither side of the second disk is accessible by a cover. This is wrong since the limitation “cover” does not require direct contact or “accessibility”, as detailed in finding 11.

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In Summary, it appears that the majority of arguments made by the applicant pertain to ~~claim language which the applicant feels has narrower scope than would be reasonably expected~~ in the art. The applicant appears to be reading limitations from the specification and the drawings into the claims.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,
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Art Unit 3679

VLM

VLM

November 12, 2004

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